

IN THE CHANCERY COURT OF DAVIDSON COUNTY
IN THE TWENTIETH JUDICIAL DISTRICT OF TENNESSEE

STATE OF TENNESSEE, <i>ex rel.</i>)	
PAUL G. SUMMERS, Attorney)	
General and Reporter,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
BAKER & TAYLOR, INC. d/b/a)	
BAKER & TAYLOR BOOKS,)	
)	
Defendant.)	

CONSENT DECREE

This matter came before the Court upon the joint motion of the parties for entry of this Consent Decree and Judgment (hereinafter referred to as “Consent Decree”), and it appearing that Defendant Baker & Taylor and W.R. Grace, a non-party, have paid to Plaintiff \$341,485.41 as partial consideration for the settlement of this matter, that Baker & Taylor and Plaintiff have consented to the entry of this Consent Decree pursuant to the terms and conditions contained herein, and that the Plaintiff, State of Tennessee, and the Defendant, Baker & Taylor, have consented to the making and entry of this Final Judgment and Order without admission by any party in respect to any issue of fact or law other than those with regard to jurisdiction set forth in Part I of this Final Judgment, and without this Final Judgement constituting evidence of any admissions by any party hereto with respect to any issue of fact or law other than those with regard to jurisdiction set forth in Part I of this Final Judgment, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and this matter pursuant to Tenn. Code Ann. §§ 47-18-101 and 16-11-102(a), and venue is proper pursuant to Tenn. Code Ann. §§ 47-18-108(a)(3) and 20-4-104 because it is a county in which the Defendant has conducted business.

PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by Attorney General Paul G. Summers, at the request of the Division.

3. Defendant Baker & Taylor is a Delaware corporation with its headquarters at 652 East Main Street in Bridgewater, New Jersey, and at 2709 Water Ridge Parkway, #500, Charlotte, North Carolina. At all times material to this action, Baker & Taylor has been engaged in the book wholesaling and distribution business within the State and throughout the United States.

INJUNCTIVE RELIEF

4. IT IS HEREBY ORDERED that Baker & Taylor, Inc. (hereinafter “Baker & Taylor”) is permanently enjoined and restrained from engaging in any of the following:

a. Billing or willfully receiving payment for any book from a school, community college, university, library or library association purchaser at a higher price than the agreed upon price for the transactions reflected in the bill or payment, whether such price was agreed upon in a written contract, correspondence, or orally;

b. Employing in its pricing system for a school, community college, university, library or library association purchaser any pricing category or method which is not fully disclosed, in writing, to that purchaser within the text of the contract or offer itself, prior to execution or acceptance of the contract, if employing that pricing category or method would result in book prices inconsistent with the purchaser’s contract;

c. Using any term, grouping, or categorization of books in its pricing system for a school, community college, university, library or library association purchaser, in a manner inconsistent with its contract with that purchaser;

d. When a contract between Baker & Taylor and a school, community college, university, library or library association purchaser specifies a range of discounts applicable to a given category or type of books, placing a limit on the maximum amount of the discount actually given that is less than the full specified range of discounts;

e. When any contract between Baker & Taylor and a school, community college, university, library or library association purchaser provides for a discount to the customer commensurate with the discount Baker & Taylor receives from the publisher, failing to provide an actual discount that fully reflects the publisher's discount (minus Baker & Taylor's usual profit margin in that contract on books similarly discounted by the publisher);

f. Making any untrue, deceptive or misleading statement to a school, community college, university, library or library association purchaser about discounts offered by Baker & Taylor;

g. Making any untrue or misleading statement in any contract with a school, community college, university, library or library association purchaser about discounts offered by Baker & Taylor as applied to any particular term, group, or category of book; and

h. Using similarly-defined terms, groups, or categorizations of books inconsistently as between different school, community college, university, library or library association customers of Baker & Taylor; provided however, that nothing herein shall preclude Baker & Taylor from charging its customers on the basis of any terms, groups or categorizations of books in accordance with a written or oral request, solicitation or instruction from the customer(s) that departs from Baker & Taylor's normal usage of those terms, groups or categorizations. Provided, further, that nothing in this section 3.h. shall be construed as relieving Baker & Taylor of its duty to comply with their terms of this Consent Decree nor as an acceptance or waiver regarding any unfair or deceptive conduct of Baker & Taylor.

REPORTING

5. For a period of three years from the date of this Consent Decree, Baker and Taylor shall make available to the State upon 30 days notice all documents and records to assess compliance with this Consent Decree. These documents and records shall be provided at Baker & Taylor's expense unless the request is made more frequently than once in any six month period, in which case the expense of copies for additional requests shall be borne by the State.

DISTRIBUTION BY THE STATE

6. The funds received in the settlement of the claims asserted herein shall be used by the Attorney General of Tennessee at his sole discretion. Of the \$341,485.41 that will be paid to the State, \$275,000.00 will be used for:

- 1) deposit in the State's general fund;
- 2) deposit in the consumer education fund of the Office of the Attorney General;
- 3) use in antitrust or consumer protection enforcement;
- 4) restitution to damaged parties as determined by the Attorney General; or
- 5) deposit in a state agency fund.

7. The remaining \$66,485.41 will be paid to the Office of the Attorney General & Reporter for attorneys fees and costs associated with the litigation.

8. The decision of the Attorney General or his designee regarding the qualification for and the amount of restitution shall be final and binding on the person seeking or receiving restitution and the Plaintiff, and said decision shall not be reviewable.

NON-WAIVER PROVISIONS

9. Nothing in this Consent Decree shall preclude the State from exercising any administrative, legal or equitable remedies available to it to enforce the provisions of this Consent Decree, or to enforce the laws of the State of Tennessee, in the event that Baker & Taylor violates any provision of this Consent Decree.

10. Nothing in this Consent Decree shall be construed as relieving Baker & Taylor's duty to comply with all applicable federal, state, and local laws, regulations, rules or permits.

11. Nothing in this Consent Decree shall be construed as a waiver by any person or entity of any private rights, causes of action, or remedies against Baker & Taylor, except as may occur by operation of law.

12. Nothing in this Consent Decree shall be construed to limit or modify the lawful powers of the Attorney General or the State of Tennessee to request, demand or compel production of documents or the testimony of witnesses.

SEVERABILITY

13. The provisions of this Consent Decree shall be severable and should any provision be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Consent Decree and Judgment shall remain in full force and effect.

SUCCESSORS

14. This

community college, university, library or library association in the State of Tennessee and constitutes a continuing obligation.

MISCELLANEOUS

15. This Consent Decree shall be enforceable only by Baker & Taylor and the State of Tennessee.

16. This Consent Decree does not constitute an approval by the State of Tennessee of any of Baker & Taylor's advertising, business programs or practices, and Baker & Taylor shall make no representations to the contrary.

17. As between Baker & Taylor and the State of Tennessee, the determination of the manner of allocation or distribution of the settlement proceeds as set forth in paragraph 5 is solely the responsibility of the Attorney General, and is being made in the sole judgment of the Attorney General, without any involvement or responsibility of Baker & Taylor. No person seeking or receiving payment pursuant to this Consent Decree shall have any legal recourse against Baker & Taylor with respect to the Attorney General's determination of the manner of allocation or distribution of the settlement proceeds.

18. This Court retains jurisdiction over this matter for the purpose of enabling the parties to apply for such further order or directives as may be necessary or appropriate.

19. This Consent Decree becomes effective upon execution by the parties and entry by the Court.

FOR THE STATE OF TENNESSEE:

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